

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Return Date: January 10, 2019

Time: 10:00 a.m.

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In re:

Chapter 13
Case No.: 18-46638-608

DAMANY DAVIS, M

Debtor(s)

NOTICE OF MOTION

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SIRS / MADAMS:

PLEASE TAKE NOTICE, that MICHAEL J. MACCO, Chapter 13 Trustee of the above captioned estate, will move before the Honorable Carla E. Craig, United States Bankruptcy Judge, on the 10Th day of JANUARY, 2019 at 10:00AM, at the United States Bankruptcy Court located at 271 Cadman Plaza East – Courtroom 3529, Brooklyn, New York 11201, for an Order pursuant to 11 U.S.C. §§329(b), 330(a)(1)(A), 521, & 1307(c), and Local Bankruptcy Rule 2017, (i) dismissing this case by reason of the debtor(s)' failure to submit monthly pre-confirmation payments, failure to provide and/or file documents, failure to appear at §341 meeting of creditors, (ii) disgorging legal fees in full paid by the debtor to debtor' counsel, THE HERCULES FIRM; (iii) turning disgorged fees over to the Clerk of the Court for administration of other cases, and (iv) for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, shall be filed with the Court and served on the undersigned no later than seven (7) days prior to the return date of this motion.

Dated: Islandia, New York
December 21, 2018

Yours, etc.

MICHAEL J. MACCO
Chapter 13 Trustee
2950 Express Drive South, Suite 109
Islandia, NY 11749
(631) 549-7900

To: *Office of the United States Trustee*
DAMANY DAVIS, M , Debtor(s)
THE HERCULES FIRM, Attorney for Debtor(s)
All Interested Parties and Creditors

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 13
Case No.: 18-46638-608

DAMANY DAVIS, M

Debtor(s)

APPLICATION

X

TO THE HONORABLE CARLA E. CRAIG, UNITED STATES BANKRUPTCY JUDGE:

MICHAEL J. MACCO, Chapter 13 Trustee of the above captioned estate, respectfully represents, as follows:

1. The debtor(s) filed a Chapter 13 petition under the provisions of 11 U.S.C., on November 15, 2018 and thereafter MICHAEL J. MACCO was duly appointed and has qualified as Trustee.

2. As of the date of this motion, the debtor(s) has failed to submit any monthly pre-confirmation payments to the Trustee.

3. In addition, as of the date of this motion the debtor(s) has failed to file all filings required under Section 521 of the Bankruptcy code.

4. Furthermore, as of this date the debtor has failed to provide the Trustee with all mandatory disclosure documentation set forth in Local Bankruptcy Rule 2003-1.

5. Moreover, the debtor failed to appear at the initial §341 meeting of creditors, held on December 19, 2018 at 10:15 a.m.

6. The debtors' counsel, THE HERCULES FIRM, also failed to appear on the debtor's behalf at the §341 meeting of creditors, held on December 19, 2018 at 10:15 a.m.

7. In addition, the debtor's attorney failed to file the Disclosure of Attorney Compensation.

8. Section 329(b) of the Bankruptcy Code clearly states, as follows:

"If such compensation exceeds the reasonable value of any such services the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, ..."

9. Section 330(a)(1)(A) of the Bankruptcy Code clearly states, as follows:

"After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 – reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and []"

10. The Trustee recommends that THE HERCULES FIRM be directed to file a 2016(b) Statement of Pre-petition legal fees and that these legal fees be disgorged in full, and turned over to the Clerk of the Court for administration of other cases.

11. This appears to be nothing more than another filing for the sole purpose of obtaining the rights and benefits of the Automatic Stay, as provided in 11 U.S.C. §362.

12. This is a material default and is prejudicial to the rights of the creditors of the debtor(s).

WHEREFORE, the Trustee requests an Order pursuant to the provisions of 11 U.S.C. §§329(b), 330(a)(1)(A), 521, & 1307(c), and Local Bankruptcy Rule 2017, (i) dismissing this case, (ii) disgorging legal fees in full paid by the debtor to debtor' counsel, THE HERCULES FIRM, (iii) turning disgorged fees over to the Clerk of the Court for administration of other cases, and (iv) for such other and further relief as this Court deems just and proper.

Dated: Islandia, New York
December 21, 2018

/s/ Michael J. Macco

Michael J. Macco, Chapter 13 Trustee
2950 Express Drive South, Suite 109
Islandia, NY 11749
(631) 549-7900

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:

SHAMUS MROTZEK, being duly sworn deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Suffolk County, New York.

On December 21, 2018 deponent served the within:

NOTICE OF MOTION AND APPLICATION

upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of same, enclosed in a post-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

*Damany Davis
1125 East 99 Street
Brooklyn, NY 11236
Debtor(s)*

and upon the following parties, by the e-mail address designated by said parties for that purpose;

*Office of the United States Trustee
U.S. Federal Office Building
USTP.Region02.BR.TFRTDR@usdoj.gov*

*Anyekache Hercules, Esq.
The Hercules Firm
Attorney for Debtor(s)
ajones4920@gmail.com*

/s/ *Shamus Mrotzek*
SHAMUS MROTZEK

Sworn to before me this
21st day Of DECEMBER, 2018

/s/ *Lon Bragin*
NOTARY PUBLIC
Lon Bragin
Notary Public, State of New York
No. 01BR6172194
Qualified in Suffolk County
Commission Expires August 6, 2019